

The Texas Commission on Environmental Quality (commission) adopts amendments to §114.620 and §114.622. The commission also adopts new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648. The amendments and new sections are adopted *without changes* to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3187) and will not be republished.

The amended §114.620 and §114.622 and new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648 are adopted to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 3469, 79th Legislature, 2005, added Chapter 390 to the Texas Health and Safety Code. This new chapter directs the commission to establish and administer a clean school bus program within the financial limits set by amended §386.051 and §386.052 (HB 3469, 79th Legislature). This clean school bus program will fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas by reducing emissions of nitrogen oxides (NO_x).

The commission is adopting new §§114.640, 114.642, 114.644, 114.646, and 114.648 to establish this program. Under these sections, school districts, charter schools, and regional planning organizations would be eligible for reimbursement grants for the use of emissions reducing catalysts, particulate

filters, qualifying fuels, and other emissions reducing add-on equipment or technology that the commission finds will reduce emissions.

House Bill 2481, 79th Legislature, 2005, added §386.117 to the Health and Safety Code to add a rebate grant program under the Texas Emissions Reduction Plan (TERP). New §114.624 is adopted to implement this program. The rebate grant will streamline the grant application process for some applicants and will ease the administrative burden on the agency.

Amendments to §114.622 will clarify that for replacement and repower projects, the baseline vehicle, equipment, or engine must be scrapped or permanently removed from the State of Texas. Amendments to §114.620 and §114.622 create an option for the commission to use an equivalent measure to the current \$13,000 per ton cost effectiveness standard or an alternative approved by the commission. These amendments will improve TERP program effectiveness by ensuring that high-emitting engines cannot be reintroduced into an affected county and allowing the commission to increase the emissions reductions created by grants.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The adopted amendment to §114.620 modifies the definition of “Cost-effectiveness” to clarify how the cost-effectiveness of TERP grant applications will be determined. The adopted amendment to §114.622 clarifies that, for grants entailing replacement or repower of an engine or other equipment, the original equipment must be permanently removed from the State of Texas. The adopted amendment to §114.622 also clarifies that the commission may establish cost-effectiveness standards lower than the statutory \$13,000 per ton and that the commission may also make project selection decisions on a variety of factors in addition to cost-effectiveness.

Adopted new §114.624, Rebate Grant Process, establishes a process that awards TERP funds as a rebate. This new process would provide for ongoing, first-come, first-served awarding of standardized rebates for designated project types. It would create a simple, streamlined process to award TERP funds.

Amended §114.620 and §114.622 and new §114.624 are also adopted to be submitted to the EPA as revisions to the SIP.

Adopted new §114.640, Definitions, provides definitions for the Texas Clean School Bus Program. This section provides definitions for important terms in the proposed new division.

Adopted new §114.642, Applicability, establishes program eligibility for school districts and charter schools. This section also allows regional planning organizations, such as councils of government, and private nonprofit organizations to apply for and receive grants to improve the program.

Adopted new §114.644, Clean School Bus Program Requirements, establishes basic program requirements, including: the types of projects eligible for a clean school bus grant; the ability of the commission to limit or prioritize funding for the Texas Clean School Bus Program; the minimum useful life of a project under the grant program; a requirement that replaced equipment be permanently removed from the State of Texas; restricting the use of grant funds to pay incremental costs associated with the project and prohibition against using the grant for administrative expenses; prohibition against recipients using grant funding to meet federal or state legal requirements and using emissions reductions as part of an emissions banking or trading program; grant application requirements; and obligation of the grant recipient to return grant funds if they fail to meet the terms of a project grant or conditions of the proposed division.

Adopted new §114.646, Monitoring, Recordkeeping, and Reporting Requirements, establishes that grant recipients must adhere to the reporting requirements of their grant, which will occur no less frequently than annually.

Adopted new §114.648, Implementation Schedule, establishes that the Texas Clean School Bus program will expire on August 31, 2013.

New §§114.640, 114.642, 114.644, 114.646, and 114.648 are also adopted to be submitted to the EPA as revisions to the SIP.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted amendments to Chapter 114 modify the existing rules in accordance with House Bill 3469, 79th Legislature, which amended Texas Health and Safety Code, §386.051(b) and added Texas Health and Safety Code, Chapter 390 to require the commission to establish a Clean School Bus Program. The Clean School Bus Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects. The adopted rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Further, the adopted amendments to Chapter 114 modify the existing rules in accordance with House Bill 2481, 79th Legislature, which amended Chapter 386, Subchapter C of the Texas Health and Safety Code by adding §386.117, directing the commission to adopt a process to award grants in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for

certain projects under the TERP. These rule amendments will implement procedural changes and will have no effect on the environment or human health. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a regulatory impact analysis is not required because the adopted rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period that ended May 16, 2006. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with House Bill 3469 and House Bill 2481. These amendments implement a voluntary program and only affect motor vehicles and equipment which are not considered to be private real property. Therefore, promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The applicable goal of the CMP is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The specific CMP policy applicable to these rules is that commission rules comply with 40 Code of Federal Regulations (CFR), to protect and enhance air quality in coastal natural resource areas (31 TAC §501.32). The commission reviewed this adopted rulemaking for consistency with the Texas CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because this rulemaking action would reduce air pollution from diesel-powered school buses. No new sources of air contaminants are authorized and nitrogen oxides and particulate air emissions would be reduced as a result of these rules. This adopted rulemaking complies with 40 CFR Part 51. This adopted action is part of the control strategy for ozone nonattainment areas in accordance with SIP requirements in 40 CFR Part 51 and reduces emissions of particulate matter consistent with National Ambient Air Quality Standards set for particulate matter in 40 CFR Part 50.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules will reduce emissions of air pollutants.

Written comments on the consistency of this rulemaking were invited during the public comment period which closed May 16, 2006. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing on the adopted rules was held in Austin on May 9, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex. The public comment period closed May 16, 2006. No comments were received at the public hearing, but the commission did receive written comments from the Houston Regional Group of the Sierra Club (HSC), Environmental Defense (ED), the United States Environmental Protection Agency (EPA), the Texas Center for Policy Studies (TCPS), and one individual generally supporting the proposed rules.

RESPONSE TO COMMENTS

The HSC supports provisions in §114.622(c) and §114.644(e) which require grant recipients for replacement or repower projects to permanently remove old engines or vehicles from Texas.

The commission appreciates the support. Removing these “old” vehicles or engines from use in Texas ensures that they cannot continue to pollute the air in Texas.

The HSC does not support limiting the use of diesel oxidation catalysts and particulate filters to certain model years of school buses under §114.644(a)(1) and (2), but rather supports the widespread use of these pollution control devices. ED comments that these pollution control devices are verified by the U.S. EPA or certified by the California Air Resources Board for model years beyond those included in the proposed rules. ED asks that the commission expand the range of model years covered by the clean school bus program to match those for which there are verified technologies.

The commission appreciates these comments. The model year designations in §114.644(a)(1) and (2), 1994 for oxidation catalysts and 1994 to 1998 for particulate filters, reflect requirements set in the statute (Texas Health and Safety Code, §390.002). The commission notes that §114.644(a)(5) allows the commission to approve “other technologies that the commission finds will bring about significant emissions reductions.” This ability would allow the commission to fund a wide variety of emission-reducing projects. The commission did not revise the proposed rules as a result of this comment.

The HSC supports reducing the requirement for a project life of five years proposed under §114.644(d) to three years of useful life. The HSC wants installation of pollution control devices to be as widespread as possible as quickly as possible.

The commission appreciates this comment. The requirement for five years of useful life proposed under §114.644(d) reflects statutory requirements (Texas Health and Safety Code, §390.004(b)). State law and the proposed rule (§114.644(d)) also allow for a pollution control device to be used on a particular school bus for a period less than five years if that pollution control device is reinstalled on another school bus for the remainder of the required five years.

One individual comments school buses are used year-round for a variety of activities such as class, special events/field trips, sporting events or other competitions, summer events, and after school programs.

The commission acknowledges this comment.

One individual comments school buses should be air-conditioned and filtered, similar to classrooms, in order to increase learning and protect the health of students, teachers, and other staff. The first step in protecting students and teachers from exposure to air pollution on school buses would be to require that all new school buses be air-conditioned and fitted with filters. The second step would be to establish a modification program for existing school buses so that standards for existing buses could be met as time and budget allow.

Air-conditioning school buses is outside the scope of this rulemaking. The commission agrees that reducing air pollution from school buses would help protect the health of students, teachers, and other staff who work in our school systems.

The EPA and ED comment that many studies have confirmed the detrimental effect of diesel exhaust on children's health and that they support the commission's efforts to establish a clean school bus program for the State of Texas.

The commission appreciates the support.

The EPA comments that there are very few retrofits available that provide the substantial NO_x reductions for which the TERP program was established. It is improbable those retrofits would meet the \$13,000 per ton cost effectiveness requirements used in the TERP program. They comment making

the clean school bus program a viable part of the TERP program could require some modifications to the program. The EPA recommends proposed §114.622(d) be revised to identify what the “additional measures” are in addition to, and that the commission provide guidance describing such additional measures and how they will be considered.

The commission notes while the TERP program and the Clean School Bus program share a similar method of finance, they are two separate programs. The programs are authorized by separate chapters of the Texas Health and Safety Code. Furthermore, Texas statute and the commission’s rules do not establish a specific cost effectiveness requirement for emissions reduction projects under the Clean School Bus program. Section 114.622(d) does not apply to projects under the newly adopted Division 4. The commission did not revise the proposed rules as requested.

The EPA recommends the proposed definition of “Qualifying fuel” under §114.640 be modified by placing a comma after the word “bus” to indicate that the final “that” clause does not apply to school buses but instead to the fuel.

The commission appreciates the EPA’s comment. The definition included in the rule is the literal definition that was adopted into the Texas Health and Safety Code by the 79th Legislature. The commission did not revise the proposed rules as suggested.

The EPA comments additional documentation may be necessary if the clean school bus program is submitted as a SIP revision. More specifically, the EPA comments the commission should provide a demonstration of the adopted rules' consistency with Federal Clean Air Act, §110(l). The EPA also comments if the clean school bus program is to be approvable into the SIP under the Economic Incentive Program, reductions must be surplus, quantifiable, enforceable, and permanent. The EPA requests the commission confirm that the adopted rule changes are consistent with Federal Clean Air Act, §110(l) and with its guidance entitled "EPA's Improving Air Quality with Economic Incentive Programs" (Chapters 4 and 8, January 2001). The EPA notes it has previously approved the TERP program under these conditions.

Adopted rules for the Texas Clean School Bus Program are consistent with requirements of the Federal Clean Air Act, §110(l). Under the EPA's guidance for economic incentive programs, the Texas Clean School Bus Program meets the requirements of a financial mechanism economic incentive program. Although the Clean School Bus Program derives its funding from the same source, the program is separate from the TERP Emissions Reduction Incentive Grant Program. The primary requirements of the EPA guidance are:

***Surplus:* Under the Clean School Bus Program an activity will not be eligible if it is required by any state or federal law, regulation, memorandum of agreement, or other legally binding document. The program solicitation documents and grant instructions will outline additional restrictions and describe other eligible activities.**

Enforceable: The Clean School Bus program will require a review of each project funded.

Contracts will require achievement of the emission reductions over the designated project life.

Emission reductions will be verified through reports on use of the grant-funded buses and on-site monitoring and audit visits. Contracts will contain provisions that allow the state to recapture grant money for the failure to comply with grant obligations. The reports and monitoring activities will be used by TCEQ to track compliance and effectiveness of the grant recipients in fulfilling their obligations under the contract. The TCEQ may, at any time, before or after reimbursement, request additional evidence concerning costs.

Quantifiable: Emissions reductions achieved through the Texas Clean School Bus Program will be quantified using a comparison of baseline NO_x and particulate matter emissions with reduced NO_x and particulate matter emissions. Engine emissions certifications and retrofit system verifications by the EPA will be used to verify the emissions of the reduced-emissions engines and retrofit systems. Baseline emission rates for uncontrolled engines will be based on factors developed and used for SIP modeling purposes by the TCEQ.

The Clean School Bus Program solicitation documents and grant instructions will outline the approach for determining incremental costs, emission reductions and cost-effectiveness. The application forms will require the applicant to provide data on the incremental costs of each activity, vehicle or equipment usage patterns, and information about the vehicle or equipment needed to determine emission rates. Emission factors, load factor, and usage pattern information will be used by the TCEQ to calculate emission reductions attributed to an activity. The

solicitation documents and grant instructions will contain information on how to determine the level of NO_x and particulate matter emissions for the baseline and the new vehicle and equipment. Using this information, the TCEQ will determine the emissions reductions and cost effectiveness of the project.

For a project to be eligible for Clean School Bus Program funding, the emission rate of engines or the emission reduction factor for retrofit systems must be certified or verified under an applicable EPA certification or verification program. In accordance with agreements between the EPA and California Air Resources Board (CARB), CARB certification or verification will also be accepted. In some cases, the TCEQ may also accept testing results under EPA, CARB, and/or TCEQ approved test protocols to determine the emission rate or emission reduction factor. This approach will provide the most flexibility for the program while also restricting the evaluation process to those technologies or products that can provide documentation that will be acceptable to the EPA.

***Permanent:* The TCEQ will establish minimum requirements for the life of a project, which will be at least five years. The project life will be the period in which the grant recipient is contractually obligated to monitor and report on the use of the grant-funded vehicle, equipment, and/or fuel. Environmental benefits from projects under the Clean School Bus Program will occur for at least this period. Emissions reductions achieved through this program are contractually and statutorily permanent for the project life established in the grant contract and**

will be permanently retired. Emissions reductions from the Clean School Bus Program will not be usable in an averaging, banking, or trading program.

General Equity Principle and Environmental Justice Principle: The Texas Clean School Bus Program is not a banking and trading program so program disbenefits are not expected. By design, this program reduces NO_x and particulate matter emissions with a concentration on cleaner diesel engines through economic incentives in the form of grants. Eligible projects include (but are not necessarily limited to) diesel oxidation catalysts, diesel particulate filters, purchase and use of emission reducing add-on equipment, the use of qualifying fuel, and other technologies that the commission finds will bring about significant emissions reductions.

Penalty Provisions: Upon the performing party's failure to comply with the requirements of a Clean School Bus grant, the TCEQ may, at its own discretion, require that the performing party return or repay all or a portion of the reimbursement funds.

Procedures for Public Disclosure of Information and Provisions for Addressing Uncertainty: Performing parties will maintain project financial information and data used in the preparation or support of any request for reimbursement (direct and indirect) and copies of any cost information or analysis submitted to the TCEQ. The TCEQ, the Texas State Auditor's Office, or any of their authorized representatives will have access to all such books, records, documents, and other evidence for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying

during normal business hours. Furthermore the performing party must agree to the disclosure of all information and reports resulting from access to records under the grant.

Additionally, property records of grant equipment will be maintained that describe the usage, ownership, and any other details as outlined in the grant contract. All data and other information developed under the grant agreement will be furnished to the TCEQ and will be public information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552.

Safeguards will be established to monitor program funding and emission reductions. Applicants of Clean School Bus Program funding will be required to monitor the use of grant-funded vehicles, equipment, and fuel and to report to the TCEQ for the life of each grant-funded activity. Grant recipients will be required to complete the project according to the time frames explained in the grant agreement.

Adopted revisions to the TERP program rules in Division 3 are also consistent with Federal Clean Air Act, §110(l) and are being submitted to the EPA as a SIP revision. The adopted rules will serve to make the program more accessible and more cost-effective; thereby making the program more effective overall. As the EPA notes in its comment, the TERP program is already approved under federal guidelines for economic incentive programs and the revised rules will continue to meet federal guidance.

ED generally supports the rule and comments that it is crucial to have basic rules in place for the Texas Clean School Bus Program so that the commission can proceed quickly to award grants when funding becomes available.

The commission agrees and appreciates ED's support.

ED and TCPS comment while they generally support the rules as proposed, they would like to see the rules refined to "better reflect the legislatively-stated goal of improving the 'micro-environment' in and around school buses."

The commission contends the adopted rules for the Texas Clean School Bus Program are consistent with HB 3469. The adopted rules develop the basic framework of a clean school bus program. The program will be implemented with a more comprehensive set of guidelines and requirements.

ED supports new §114.640 and §114.642. ED notes certain school districts contract out some or all of their transportation services to private companies and suggests that the commission explore ways to ensure buses operated by third parties can participate in the Texas Clean School Bus program.

The commission appreciates ED's support. HB 3469, as enacted, empowers the commission to issue grants only to school districts (including countywide school districts), charter schools, a regional planning commission (or a similar regional agency created under Texas Government

Code, Chapter 391), councils of government, and private nonprofit organizations. The commission is not aware of a way to include buses owned by private companies in the Texas Clean School Bus Program, but it does welcome further ideas from stakeholders as the program is implemented.

ED and TCPS comment that proposed §114.644(b) is inconsistent with the statutory language of HB 3469 and should be removed.

The commission contends proposed §114.644(b) is consistent with language in HB 3469 which gives the commission the authority to “establish criteria for setting priorities for projects eligible to receive grants under this chapter” (Texas Health and Safety Code, §390.004(a)). Setting program priorities will allow the commission to ensure that available funds are spent as effectively as possible.

ED comments the commission should clarify what it means by “additional pollutants to be addressed” during a funding period (§114.644(c)). ED contends that such language is superfluous in light of the specific technologies enumerated in §114.644(a).

In order to spend available funds as effectively as possible, the commission wishes to have the ability to prioritize one or more pollutants over others if scientific evidence warrants such a priority.

ED comments the clean school bus program should be made as simple as possible for school districts by expressly targeting grants to a small number of already verified technologies like those in §114.644(a).

It believes administrative ease will attract participation from smaller school districts.

The commission appreciates ED's suggestion.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD
AND NON-ROAD VEHICLES**

§114.620, §114.622, §114.624

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new section are also adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, the amendments and new section are adopted as part of the implementation of House Bill 2481, 79th Legislature, 2005.

The adopted amendments and new section implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 2481, 79th Legislature, 2005.

§114.620. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA; and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Cost-effectiveness**--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) **Guidelines**--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) **Incremental cost**--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) **Motor vehicle**--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) **Non-road diesel**--A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) **Non-road engine**--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) **On-road diesel**--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(8) **Qualifying fuel**--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) **Repower**--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) **Retrofit**--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) **Small business**--A business owned by a person who:

(A) owns and operates not more than two vehicles, one of which is:

(i) an on-road diesel with a pre-1994 engine model; or

(ii) a non-road diesel with an engine with uncontrolled emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects;
- (8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and
- (9) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state.

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of \$13,000 per ton of NO_x emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(e) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(f) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(g) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(i) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

§114.624. Rebate Grant Process.

(a) This section establishes a process to provide fast and simple access to rebate grants, in accordance with Texas Health and Safety Code, §386.117.

(b) The rebate grant process shall:

- (1) designate certain types of projects eligible for rebates;
- (2) project standardized oxides of nitrogen emissions reductions for each designated project type;
- (3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may:

(1) award rebate grants as a pilot project for a specific region or may award the grants statewide;

(2) limit or expand the designated project types as necessary to further the goals of the program; and

(3) administer the rebate grants or may designate another entity to administer the grants.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM

§§114.640, 114.642, 114.644, 114.646, 114.648

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; Chapter 386, which establishes the TERP; and Chapter 390, which establishes the Clean School Bus Program. Finally, the new sections are adopted as part of the implementation of House Bill 3469, 79th Legislature, 2005.

The new sections implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 3469, 79th Legislature, 2005.

§114.640. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Diesel exhaust**--One or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) **Incremental cost**--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(3) **Qualifying fuel**--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(4) **Repower**--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(5) **Retrofit**--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

§114.642. Applicability.

(a) Any school district or charter school in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.644. Clean School Bus Program Requirements.

(a) Eligible projects include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(f) An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(g) A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(h) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding

document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(j) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

§114.646. Monitoring, Recordkeeping, and Reporting Requirements.

Grant recipients must meet the reporting requirements of their grant, which must occur no less frequently than annually.

§114.648. Implementation Schedule.

This division expires August 31, 2013.

